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September 13, 2011

Diane Chauncey  
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Re: Review of Large Scale Wind Ordinance

Dear Diane:

I am writing in response to your request that this office review the proposed Large Scale Wind Ordinance (the Ordinance) for the Town of Antrim. It is my understanding that the Ordinance was discussed during a public hearing on August 27, and that changes were made following that hearing, which has prompted a second public hearing on September 13. I have reviewed the Ordinance and it is generally satisfactory for its intended purpose. I have made some editorial changes to the draft Ordinance, which is enclosed with this letter. Below are a few comments that I felt merit some explanation.

First, the Ordinance regulates Meteorological (Met) towers generally, but Met towers are also addressed in the Antrim Small Wind Energy Ordinance. Is it the intent of this Ordinance to regulate all Met towers, both permanent and temporary, regardless of whether they are part of a large wind facility or small wind facility? The definition of Met tower in the Ordinance is quite broad and arguably conflicts with the narrower definition in the Small Wind Energy Ordinance. Pursuant to Section 3.1 of the Ordinance, its definition of Met tower would control. It appears that indeed the Board is seeking to regulate Met towers exclusively with this new Ordinance, which is acceptable. It is important, however, to be sure that that is the intent.

Second, at various places throughout the Ordinance, the applicant is required to submit studies and reports prepared by qualified professionals relating to topics such as noise, environmental concerns, and fire prevention. These provisions also suggest that the qualified professional that the applicant uses must be approved by the Planning Board. The Board has reserved the right to retain third-party experts, at the applicant's expense, to review applications and the applicant's expert reports, which is encouraged. Given the Board's ability to have a third party review information, and the Board's ability to reject a particular expert opinion when reviewing an application, I do not believe the Board should be requiring the applicant to use only those professionals approved by the Board.

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Page 2

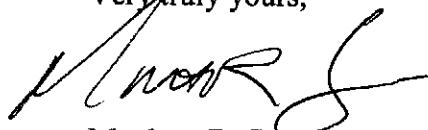
Third, Section 7.1.2.1 provides that Met towers must be lower than 200 feet and cannot be lit. It is my understanding that the Federal Aviation Administration (FAA) generally requires lighting for towers that are 200-feet tall or higher, but there may be situations in which the FAA may require lighting on shorter towers, depending upon the circumstances. Consequently, the Board should see that any application that is submitted contains a statement from the FAA whether or not the proposed Met tower would need to be lit in the location proposed. As you know, this is traditionally done with applications for telecommunications towers and the applicant should be able to provide the information fairly easily.

Fourth, there are two sections (7.2.1 and 7.2.2.1) where the Ordinance states that the Board may waive certain requirements only if the waiver is requested by the affected property owner. Because other property owners are not parties to the application and do not represent the applicant, they do not have the ability to file waiver requests. That said, I have revised the sentence slightly so it provides that the applicant may submit the waiver request, but that the request will not be considered (notice I did not say granted) unless it is supported by the affected property owner.

Fifth, I have deleted Sections 8.14 and 9.0. Both of those sections require the applicant to provide evidence of financial viability, insurance, and tax impacts to the community as part of the application process. The Planning Board's role is to review the project being proposed and determine whether it is appropriate for the location proposed. Whether or not the particular company applying for the permit will be financially sound after construction, or has adequate insurance to cover potential injuries to third parties, is arguably beyond the scope of review. There is no question that a land use board wants every project that is approved to be financially viable, but that cannot stand as a condition to approval. That said, the Board has the authority to require the posting of security to cover various improvements as well as decommissioning, if necessary. This is different, however, from requiring an applicant to prove that it will be financially viable into the future, or that its use will be financially beneficial to taxpayers. I realize that some model ordinances may include provisions similar to Sections 8.14 and 9.0, but it is this office's opinion that those provisions are inappropriate.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,



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Enclosure